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May 11, 2004

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**BY HAND DELIVERY**

Marlene H. Dortch, Esquire  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW-B204  
Washington, DC 20554

**RECEIVED**

MAY 11 2004

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Attention: Assistant Chief  
Audio Division

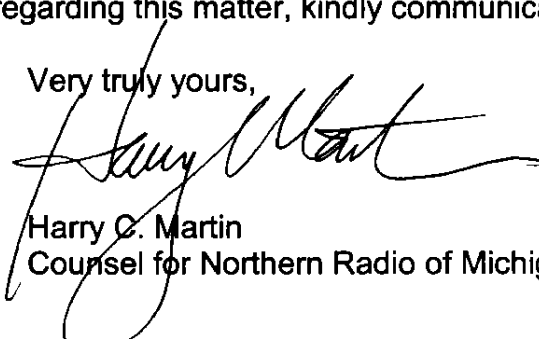
**Re: Northern Radio of Michigan, Inc.  
MB Docket No. 02-335, RM-10545  
Opposition to Petition for Reconsideration**

Dear Ms. Dortch:

Enclosed herewith on behalf of Northern Radio of Michigan, Inc. are an original and four copies of its Opposition to Petition for Reconsideration. The Opposition is directed to the Petition for Reconsideration filed on March 25, 2004 by Fort Bend Broadcasting Company.

Should there be any questions regarding this matter, kindly communicate directly with the undersigned.

Very truly yours,



Harry C. Martin  
Counsel for Northern Radio of Michigan, Inc.

HCM:jpg

Enclosures

cc: All Parties on Certificate of Service (w/encl.)

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

ORIGINAL

In the Matter of )

Amendment of Section 73.202(b) )

Table of Allotments )

FM Broadcast Stations )

(Hart, Pentwater, and )

Coopersville, Michigan) )

MB Docket No. 02-335

RM-10545

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MAY 11 2004

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Assistant Chief, Audio Division

**OPPOSITION TO PETITION FOR RECONSIDERATION**

Northern Radio of Michigan, Inc. ("Northern"), licensee of Stations WKLT(FM), Kalkaska, and WKVK(FM), Honor, Michigan, hereby files its opposition to the Petition for Partial Reconsideration (the "Petition") filed on March 25, 2004 by Fort Bend Broadcasting Company ("Fort Bend").<sup>1</sup>

Through a counterproposal (the "Counterproposal") filed in this proceeding on December 30, 2002, Fort Bend sought to relocate Station WBNZ(FM), Channel 257C2, from Frankfort to Garfield Township, Michigan, and to upgrade the station's class to C1. In *Hart, Pentwater and Coopersville, MI*, 19 FCC Rcd 1886 (2004), the Commission rejected the Counterproposal, saying that Fort Bend had not presented a true counterproposal that was in conflict with the original proposal in the proceeding. Additionally, the Commission said Fort Bend's plan was dependent upon a vacant-channel "backfill" at Frankfort, a procedure no longer permitted under Commission policy. The Counterproposal should have been rejected on the additional grounds

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<sup>1</sup> This opposition is timely filed within 15 days after publication in the Federal Register of notice of the filing of the Petition, on April 27, 2004, 69 *Fed. Reg.* 22803. See FCC Rules, Section 1.4(b)(1).

that on the December 30, 2002 comment deadline in this proceeding, a crucial element of the Counterproposal was contingent upon action in another pending rulemaking proceeding.<sup>2</sup> For this additional reason, the Petition should be denied.

Fort Bend's reallocation plan, as presented in its Counterproposal, provided for the reallocation of WBNZ's frequency, Channel 257, to Garfield Township and an upgrade to Class C1. This reallocation was dependent on Fort Bend's proposal to substitute Channel 249C2 for Channel 257C2 for Station WATZ, Alpena, Michigan. The substitution at Alpena was, in turn, dependent on the substitution of Channel 246A for Station WMRX-FM's currently licensed Channel 249A at Beaverton, Michigan. But the Beaverton substitution was dependent upon acceptance of Fort Bend's proposal to substitute Channel 295A for Channel 245A, used by Station WWCM, Standish, Michigan. However, as shown in the Reply, and again below, Channel 295A was not available at Standish as of the December 30, 2002 deadline for counterproposals in this proceeding.

Counterproposal Exhibit E-5 addressed the Standish allocation. The fourth line of the allocation study reported a 5.3 kilometer short spacing to a pending allocation proposal for Channel 297C3 at Ubly, Michigan, and included a footnote 22 that attributes the Ubly entry to a "database error." But the only database error was in the name of the proposed community. As shown in the engineering statement of Carl T. Jones Corporation that was included in the Reply, the coordinates listed for Ubly in CDBS actually were the coordinates for Channel 297C3

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<sup>2</sup> This contingency was brought to the Commission's attention in Northern's January 15, 2003 Reply Comments ("Reply"). While the Commission did not address Northern's contingency argument in *Hart*, the flaw pointed out in the Reply is fatal to the Counterproposal and should be considered in disposition of the Petition should Fort Bend be able to prevail on its other arguments.

proposed for Cass City, Michigan in a counterproposal timely filed by Edward Czelada ("Czelada") in MM Docket No. 01-33. The Czelada counterproposal, which also proposed a channel assignment at Ubly, was not considered in *Cass City and Caro, Michigan*, 16 FCC Rcd 9461 (2001), in MM Docket No. 01-33 because, the Commission said, the coordinates proposed for Channel 297C3 at Cass City failed to comply with city-grade coverage and spacing requirements. See *Cass City and Caro, Michigan (Erratum, fn.1)* (released May 11, 2001).<sup>3</sup> However, Czelada filed a timely petition for reconsideration on June 11, 2001, and that petition was pending as of the December 30, 2002 deadline for counterproposals in this proceeding.<sup>4</sup>

As shown in the Engineering Statement included in Northern's Reply, Fort Bend's Channel 295A allocation at Standish did not protect the proposed Cass City Channel 297C3 coordinates as of the date Fort Bend filed its Counterproposal. Those coordinates reflected a timely filed petition that had not been acted upon as of December 30, 2002. The fact the Counterproposal did not protect the Cass City coordinates (and instead characterized the Cass City coordinates as a "database error"), renders the entire Counterproposal defective because, as shown, the Standish Channel 295A substitution is an integral part of the overall proposal. It is the Commission's policy not to accept rulemaking proposals that are contingent upon final action in another rulemaking proceeding. *Auburn, Northport, Tuscaloosa, et al, Alabama*, 17 FCC Rcd

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<sup>3</sup> The *Erratum* is available electronically in the FCC's record for MM Docket No. 01-33, but was not published in the FCC Record.

<sup>4</sup> Action on the Czelada's Channel 297A proposal for Cass City still is not final. While Czelada's petition for reconsideration was denied March 12, 2004, by *Memorandum Opinion and Order*, DA 04-611 (released March 12, 2004), he filed a timely application for review on April 12, 2004.

16227,16229 (2002) (*recon. pending*); *Esperanza, Puerto Rico, Christiansted, Virgin Islands*, 11

FCC Rcd 2908, 2908-09 (1996). The reason for this policy, as explained in *Auburn*, is,

...processing contingent proposals is not conducive to the efficient transaction of Commission business and imposes unnecessary burdens on the staff. The staff would either have to wait until the contingency is met, thereby further delaying action in a case, or would have to revisit a decision if a proposal was granted contingent on the outcome of an action that never occurred. In either case, the staff's attempts at processing cases and achieving finality is frustrated.

*Auburn, supra* (footnote omitted). This policy applies to the Counterproposal, which, when filed, was in conflict with Czelada's petition for reconsideration.

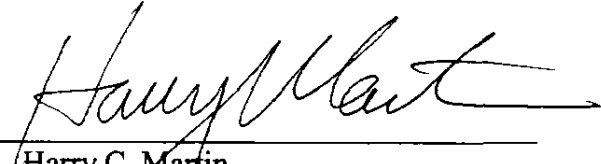
The merits of Czelada's petition for reconsideration are not important because the Commission could not have considered the merits of the Czelada petition in connection with its review of the Counterproposal. To have done so in this case would have required similar preliminary review in every case involving an undecided petition for reconsideration. This would put the Commission into the position of having to determine the merits of pending petitions for reconsideration without formally deciding them, and without knowing when such determinations would, if ever, become final. This would involve the very type of *post hoc* and contingent processing the policy discussed above was intended to bar.

For the reasons stated above, Fort Bend's Counterproposal was technically defective under Section 73.207 of the rules as the December 30, 2002 deadline for such petitions. For this reason its Petition should be dismissed. *Cloverdale, Montgomery and Warrior, Alabama*, 12 FCC Rcd 2090, 2093 (1997) (counterproposals must be technically correct and substantially complete at the time they are filed); *accord, Fort Bragg, California*, 6 FCC Rcd 5817 (1991).

**WHEREFORE,** These matters considered, it is respectfully requested that Fort Bend's  
Petition for Reconsideration be DISMISSED.

Respectfully submitted,

**NORTHERN RADIO OF MICHIGAN, INC.**

By   
\_\_\_\_\_  
Harry C. Martin  
Its Attorney

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May 11, 2004

## CERTIFICATE OF SERVICE

I, Joan George, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that I have on this 11<sup>th</sup> day of May, 2004, cause to be mailed by first class mail, postage prepaid, copies of the foregoing "Reply Comments of Northern Radio of Michigan, Inc." to the following:

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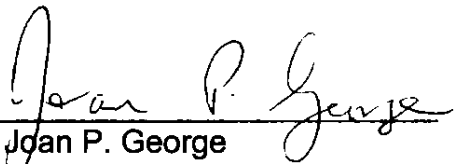
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